

COMMONWEALTH OF MASSACHUSETTS**APPELLATE TAX BOARD**

**CRAFTS AVENUE REALTY TRUST v. BOARD OF ASSESSORS OF
THE CITY OF NORTHAMPTON**

Docket Nos. F324094, F326771, Promulgated:
F330944, F334009 October 24, 2018

These are appeals heard under the formal procedure pursuant to G.L. c. 58A, § 7 and G.L. c. 59, §§ 64 and 65, from the refusal of the Board of Assessors of the City of Northampton ("appellee" or "assessors") to abate taxes on a certain parcel of real estate located in Northampton owned by and assessed to Alan and Marguerite Hankowski, trustees of the Crafts Avenue Realty Trust ("appellant"), under G.L. c. 59, §§ 11 and 38, for fiscal years 2014, 2015, 2016, and 2017 ("fiscal years at issue").

Commissioner Rose heard these appeals. Chairman Hammond and Commissioners Scharaffa, Chmielinski, and Good joined him in the decisions for the appellee.

These findings of fact and report are made pursuant to a request by the appellant under G.L. c. 58A, § 13 and 831 CMR 1.32.

Alan and Marguerite Hankowski, pro se, for the appellant.

Kenneth W. Gurge, Esq. for the appellee.

FINDINGS OF FACT AND REPORT

On the basis of testimony and exhibits offered into evidence at the hearing of these appeals, the Appellate Tax Board ("Board") made the following findings of fact.

On January 1, 2013, January 1, 2014, January 1, 2015, and January 1, 2016, the relevant valuation and assessment dates for the fiscal years at issue, the appellant was the assessed owner of a 0.041-acre parcel of land improved with a mixed-use apartment and office building ("subject building") located at 24 Crafts Avenue in Northampton ("subject property").

For fiscal year 2014, the assessors valued the subject property at \$493,300 and assessed a tax thereon, at a rate of \$15.39 per \$1,000, in the total amount of \$7,819.65, inclusive of the Community Preservation Act ("CPA") surcharge. The appellant timely paid the tax due without incurring interest and, in accordance with G.L. c. 59, § 59, timely filed an abatement application on January 27, 2014. The assessors denied the abatement application on March 25, 2014, and on June 23, 2014, the appellant seasonably filed a Petition Under Formal Procedure with the Board. On the basis of these facts, the Board found and ruled that it had jurisdiction to hear and decide the appeal for fiscal year 2014.

For fiscal year 2015, the assessors valued the subject property at \$493,300 and assessed a tax thereon, at a rate of \$15.80 per \$1,000, in the total amount of \$8,027.96, inclusive of the CPA surcharge. The appellant timely paid the tax due without incurring interest and, in accordance with G.L. c. 59, § 59, timely filed an abatement application on January 28, 2015. The assessors denied the abatement application on March 11, 2015, and on June 4, 2015, the appellant seasonably filed a Petition Under Formal Procedure with the Board. On the basis of these facts, the Board found and ruled that it had jurisdiction to hear and decide the appeal for fiscal year 2015.

For fiscal year 2016, the assessors valued the subject property at \$534,900 and assessed a tax thereon, at a rate of \$16.16 per \$1,000, in the total amount of \$8,903.30, inclusive of the CPA surcharge. The appellant timely paid the tax due without incurring interest and, in accordance with G.L. c. 59, § 59, timely filed an abatement application on January 29, 2016, which was deemed denied on March 29, 2016. On June 27, 2016, the appellant seasonably filed a Petition Under Formal Procedure with the Board. On the basis of these facts, the Board found and ruled that it had jurisdiction to hear and decide the appeal for fiscal year 2016.

For fiscal year 2017, the assessors valued the subject property at \$534,900 and assessed a tax thereon, at a rate of \$16.69 per \$1,000, in the total amount of \$9,195.30, inclusive of the CPA surcharge. The appellant timely paid the tax due without incurring interest and, in accordance with G.L. c. 59, § 59, timely filed an abatement application on January 27, 2017, which was deemed denied on April 27, 2017. On July 13, 2017, the appellant seasonably filed a Petition Under Formal Procedure with the Board. On the basis of these facts, the Board found and ruled that it had jurisdiction to hear and decide the appeal for fiscal year 2017.

The appellant presented its case through the testimony of Alan Hankowski, the owner of the subject property, and the submission of documents including: property record cards for the subject property; tax bills for the subject property; and photographs and property record cards of purportedly comparable properties.

The subject building was built in 1900, originally as a single-story building. Subsequently, a second floor was added with a center staircase from the ground floor. The subject building has a brick stone exterior, forced-hot-water heating, and no central air conditioning. The assessors grade the subject property as a C+.

The subject building's property record card indicates that it contains a total of 140 square feet of office space on the first floor and a total of 3,220 square feet of residential apartment space on the first and second floors combined. The residential apartment space is comprised of three one-bedroom apartments. Mr. Hankowski testified that the rents are \$775 per month for two of the apartments and \$800 per month for the remaining third apartment. The subject building's office space houses Mr. Hankowski's accounting practice.

For each of the fiscal years at issue, Mr. Hankowski offered a capitalization-of-income analysis using eight purportedly comparable mixed-use properties. However, he focused only on the office rent per square foot of his purportedly comparable properties, and he applied that same figure to the subject building's total leasable area, including the residential space, which comprised the majority of the subject building's leasable space.

The appellee did not present a case but counsel for the appellee cross-examined Mr. Hankowski and questioned him about the appropriate methods for valuing commercial property. Mr. Hankowski opined that the income-capitalization approach was the appropriate method for valuing commercial property, but he admitted to using only

office-space rental figures and not researching residential rental figures. The appellee rested on the validity of the subject assessments.

On the basis of the evidence, the Board found that the appellant failed to meet its burden of proving a fair market value for the subject property that was less than its assessed value for each of the fiscal years at issue. Mr. Hankowski presented an income-capitalization valuation of the subject property using purportedly comparable mixed-use buildings. Only two of his eight purportedly comparable properties included residential units, rendering the majority of his selected properties not comparable to the subject property. Moreover, of the properties that did include residential units, Mr. Hankowski compared only their office rental incomes. The Board found that this method - selectively picking the office rents from the comparables and applying those income figures to the total leasable area - fatally undermined his analysis and rendered his opinions and conclusions unsubstantiated and without merit.

Accordingly, the Board issued decisions for the appellee in these appeals.

OPINION

The assessors are required to assess real estate at its fair cash value. G.L. c. 59, § 38. Fair cash value is defined as the price on which a willing seller and a willing buyer in a free and open market will agree if both of them are fully informed and under no compulsion. ***Boston Gas Co. v. Assessors of Boston***, 334 Mass. 549, 566 (1956).

“‘The burden of proof is upon the petitioner to make out its right as [a] matter of law to [an] abatement of the tax.’” ***Schlaiker v. Assessors of Great Barrington***, 365 Mass. 243, 245 (1974) (quoting ***Judson Freight Forwarding Co. v. Commonwealth***, 242 Mass. 47, 55 (1922)). In appeals before this Board, a taxpayer “may present persuasive evidence of overvaluation either by exposing flaws or errors in the assessors’ method of valuation, or by introducing affirmative evidence of value which undermines the assessors’ valuation.” ***General Electric Co. v. Assessors of Lynn***, 393 Mass. 591, 600 (1984) (quoting ***Donlon v. Assessors of Holliston***, 389 Mass. 848, 855 (1983)). “[T]he board is entitled to ‘presume that the valuation made by the assessors [is] valid unless the taxpayers . . . prov[e] the contrary.’” ***General Electric Co.***, 393 Mass. at 598 (quoting ***Schlaiker***, 365 Mass. at 245).

Generally, real estate valuation experts, the Massachusetts courts, and this Board rely upon three approaches to determine the fair cash value of property: income capitalization, sales comparison, and cost reproduction. **Correia v. New Bedford Redevelopment Authority**, 375 Mass. 360, 362 (1978). "The board is not required to adopt any particular method of valuation," **Pepsi-Cola Bottling Co. v. Assessors of Boston**, 397 Mass. 447, 449 (1986), but the income-capitalization method "is frequently applied with respect to income-producing property." **Taunton Redev. Assocs. v. Assessors of Taunton**, 393 Mass. 293, 295 (1984).

Under the income-capitalization approach, valuation is determined by dividing net operating income by a capitalization rate. See **Assessors of Brookline v. Buehler**, 396 Mass. 520, 522-23 (1986). The income stream used in the income-capitalization method must reflect the property's earning capacity or economic rental value. **Pepsi-Cola Bottling Co.**, 397 Mass. at 451. Imputing rental income to the subject property based on fair market rentals from comparable properties is evidence of value if, once adjusted, they are indicative of the subject property's earning capacity. See **Correia v. New Bedford Redevelopment Authority**, 5 Mass. App. Ct. 289, 293-94 (1977), *rev'd on*

other grounds, 375 Mass. 360 (1978); ***Library Services, Inc. v. Malden Redevelopment Authority***, 9 Mass. App. Ct. 877, 878 (1980) (rescript).

In the instant appeals, the Board found that Mr. Hankowski's income-capitalization analysis was flawed because he failed to use sufficiently comparable properties. Only two of his eight purportedly comparable properties even included residential units, and Mr. Hankowski compared only the office rental incomes. The Board found that his office-rental figures failed to support an income figure for the subject property's total leasable area that was comprised primarily of residential space. The Board thus found and ruled that the appellant's income-capitalization analysis failed to support a value for the subject property that was lower than its assessed value.

The burden of proving a value that is lower than the assessed value is firmly on the taxpayer. See ***Schlaiker***, 365 Mass. at 245. The Board found and ruled that the appellant failed to meet its burden of proving a value for the subject property that was less than its assessed values for each of the fiscal years at issue.

Accordingly, the Board issued decisions for the appellee in these appeals.

THE APPELLATE TAX BOARD

By:

Thomas W. Hammond, Jr., Chairman

A true copy,

Attest:

Clerk of the Board